IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 20TH JULY, 2007 / 29TH ASHADHA, 1929

WP(C).No. 15511 of 2007(V)

PETITIONER:

SHAMSUDHEEN,
S/O.SAID MUHAMMED RAWTHER, MATTUMANTHA,
NALLEPPILLY VILLAGE, CHITTUR TALUK,
PALAKKAD DIST.

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS:

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1. THE CHIEF MANAGER,
THE SOUTH INDIAN BANK LIMITED,
SIB PLATINUM JUBILEE HOUSE, AYYANTHOLE,
THRISSUR.

2. THE BRANCH MANAGER,
THE SOUTH INDIAN BANK LIMITED,
DOOR NO.VIII/173A, GROUND FLOOR,
NALLEPPILLY, PALAKKAD.

BY ADV. SRI.K.PRABHAKARAN, SC FOR SOUTH INDIAN BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

WP(C) NO. 15511 OF 2007 - V

Dated this the 20th day of July, 2007

J U D G M E N T

The petitioner challenges proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') in respect of certain properties which have been purchased by the petitioner. The contention of the petitioner is that he purchased the property from one T.K.Noor Muhammed Sait who mortgaged the properties in favour of the Bank before such purchase. According to the petitioner, the original purchaser had already discharged the liability in respect of the property in question. Therefore, the proceedings under the Act against that property is illegal and unsustainable is the contention raised.

2. The Bank has filed a statement in which the petitioner's contention is refuted. The contention of the Bank is that there is no privity of contract between the petitioner and the Bank. The property in question was

mortgaged by Sri.Noor Mohammed which mortgage still exists. According to them, the mortgage liability has not yet been discharged.

3. I have considered the rival contentions. All these are disputed questions of facts, the correctness of which cannot be decided on the basis of the affidavits, but can be decided only by taking evidence for which the petitioner has to approach the appropriate forum. Therefore, the remedy of the petitioner lies elsewhere. In the above circumstances, without prejudice to the right of the petitioner to seek his remedies elsewhere, the writ petition is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007